# UNITED STATES DISTRICT COURT
# EASTERN DISTRICT OF WISCONSIN

QUINCY D. BENJAMIN,

Plaintiff,

v.

BRIAN FOSTER,

Defendant.

Case No. 19-CV-253-JPS

**ORDER**

Plaintiff Quincy Benjamin, who is incarcerated at the Wisconsin Secure Program Facility, proceeds in this matter *pro se*. He filed a complaint alleging that Defendant violated his civil rights. (Docket #1). This matter comes before the court on Plaintiff's petition to proceed without prepayment of the filing fee (*in forma pauperis*). (Docket #2). Plaintiff has been assessed and has paid an initial partial filing fee of $1.46. 28 U.S.C. § 1915(b). The Court now proceeds to screen the complaint.

The court shall screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Hutchinson ex rel. Baker v. Spink*, 126 F.3d 895, 900

(7th Cir. 1997). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. "Malicious," although sometimes treated as a synonym for "frivolous," "is more usefully construed as intended to harass." *Lindell v. McCallum*, 352 F.3d 1107, 1109–10 (7th Cir. 2003) (citations omitted).

To state a cognizable claim under the federal notice pleading system, the plaintiff is required to provide a "short and plain statement of the claim showing that [he] is entitled to relief[.]" Fed. R. Civ. P. 8(a)(2). It is not necessary for the plaintiff to plead specific facts and his statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). However, a complaint that offers mere "labels and conclusions" or a "formulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). To state a claim, a complaint must contain sufficient factual matter, accepted as true, "that is plausible on its face." *Id.* (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). The complaint's allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555 (citation omitted).

In considering whether a complaint states a claim, courts should follow the principles set forth in *Twombly* by first, "identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 679. Legal conclusions must be

supported by factual allegations. *Id.* If there are well-pleaded factual allegations, the court must, second, "assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.*

To state a claim for relief under 42 U.S.C. Section 1983, a plaintiff must allege that: 1) he was deprived of a right secured by the Constitution or laws of the United States; and 2) the deprivation was visited upon him by a person or persons acting under color of state law. *Buchanan-Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009) (citing *Kramer v. Vill. of N. Fond du Lac*, 384 F.3d 856, 861 (7th Cir. 2004)); *see also Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The court is obliged to give the plaintiff's *pro se* allegations, "however inartfully pleaded," a liberal construction. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

Plaintiff alleges that when he was incarcerated in Waupun Correctional Institution ("Waupun") in 2016, he fell out of the top bunk in his cell and hit his head. (Docket #1 at 2–3). He was hospitalized and received two stitches. *Id.* at 4. Plaintiff says that Defendant, Waupun's warden, was responsible for the injury because he did not have rails installed on the prison's bunk beds. *Id.* at 2–3.

Plaintiff fails to state any claims for relief under federal law. The Eighth Amendment protects prisoners from cruel and unusual punishment. Prison conditions violate this rule only when they fall below "the minimal civilized measure of life's necessities." *Wilson v. Seiter*, 501 U.S. 294, 304 (1991). Further, for Defendant to be liable under the Eighth Amendment, he must have been deliberately indifferent to the allegedly deficient condition. This means that Defendant must have been aware of a substantial risk of

serious harm to Plaintiff, and he must have consciously disregarded that risk. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

Plaintiff does not allege that Defendant was deliberately indifferent to the risk of harm posed by a lack of bed rails. Even if he had made such allegations, courts agree that the absence of bed rails does not raise a risk of serious harm sufficient to support Eighth Amendment liability. *Walker v. Leblanc*, Civil Action No. 15-591-SDD-RLB, 2016 WL 3951425, at *2–3 (M.D. La. June 21, 2016); *Cummings v. Sequiera*, No. 15-00227 JMS/RLP, 2015 WL 3822480, at *2 (D. Haw. June 18, 2015); *Walker v. Walsh*, Civil Action No. 3:11-CV-1750, 2012 WL 314883, at *5 (M.D. Penn. Feb. 1, 2012). In other words, a bed rail is not a minimal civilized measure of life's necessities. Plaintiff's claim is, at best, one for negligence, but the Constitution does not exist to remedy negligent conduct. *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016). This action must, therefore, be dismissed for failure to state a claim upon which relief may be granted.

Accordingly,

**IT IS ORDERED** that Plaintiff's motion for leave to proceed without prepayment of the filing fee (*in forma pauperis*) (Docket #2) be and the same is hereby **GRANTED**;

**IT IS FURTHER ORDERED** that this action be and the same is hereby **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) for failure to state a claim upon which relief may be granted;

**IT IS FURTHER ORDERED** that the Clerk of Court document that this inmate has incurred a "strike" under 28 U.S.C. § 1915(g);

**IT IS FURTHER ORDERED** that the agency having custody of Plaintiff shall collect from his institution trust account the balance of the filing fee by collecting monthly payments from Plaintiff's prison trust

account in an amount equal to 20% of the preceding month's income credited to Plaintiff's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds $10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action. If Plaintiff is transferred to another institution, county, state, or federal, the transferring institution shall forward a copy of this Order along with Plaintiff's remaining balance to the receiving institution;

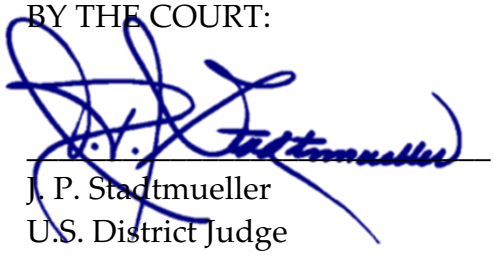
**IT IS FURTHER ORDERED** that a copy of this order be sent to the officer in charge of the agency where Plaintiff is confined; and

**THE COURT FURTHER CERTIFIES** that any appeal from this matter would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3) unless Plaintiff offers bonafide arguments supporting his appeal.

The Clerk of the Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 28th day of March, 2019.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge